

Special Cases under the 1989 Geographic Jurisdiction MOA

A “special case” is a circumstance where EPA makes the final determination of the geographic scope of WUS for purposes of section 404. Special cases may be either site-specific, or a “policy special case” that addresses all JDs in an identified geographic area or involving a specific policy issue. They are available in any situation for which there is not yet a final JD. The Special Case process was established by the 1989 Geographic Jurisdiction MOA with the Corps, reflecting responsibilities laid out in the 1979 Civiletti Memorandum. Note that the special case process currently is the only formal way Regions can raise concerns for resolution regarding draft JDs.

Process Overview for Special Cases

- Where is there not yet a final JD, a Regional Administrator (RA) can request EPA Headquarters for permission to initiate a special case. When making such a request, the RA must notify the Corps’ District Engineer in writing or by phone.
 - Under the MOA, this is technically asking to add the matter to its “Regional List,” but in practice no Region maintains such a list beyond the specific matter at hand.
 - The special case process is not available if the Corps has finalized and not withdrawn a final JD.
- EPA Headquarters has ten working days to grant or deny the special case request.
 - During that ten days, the Corps may not proceed with JDs in the special case request area.
 - If EPA fails to grant a special case during the ten-day period, the Corps may proceed.
- If EPA grants the RA’s request for a special case, the MOA establishes no deadline for EPA to complete the JD.
- A special case is considered completed when:
 - For a site-specific special case, when EPA completes and transmits to the Corps its final JD.
 - For a policy special case, when EPA issues a policy memo resolving issues raised in the special case.
- The 1989 Geographic Jurisdiction MOA indicates case-specific determinations made as a special case shall “be binding on the Government and represent the Government’s position in any subsequent federal action or litigation regarding the case.”

Implementation Issues with Special Cases

Ex. 5 - Deliberative Process

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